

### **REMARKS**

As a preliminary matter, Applicant wishes to thank Examiner Chang for her time and helpful comments at the personal interview on September 10, 2009 with Applicant's attorney, Richard Zanzalari, and Elizabeth Hanley. In the personal interview on September 10, 2009, Examiner Chang acknowledged that since claim 37 requires that  $R^3$  be a thienyl, which is not disclosed by Muto *et al.*, the rejection is moot. See Interview Summary, Paper No. 20090910. Accordingly, and in view of the claim cancellations discussed at the interview and included herein, Applicant respectfully requests allowance of the instant application.

#### ***Amendment to the Claims***

Claims 5, 7, 9, 10, 13, 18-20, and 22-47 were pending in the instant application. Solely in order to expedite prosecution, claims 5, 7, 9, 10, 13, 18-20 and 22-36 have been cancelled, claims 40-44 have been amended, and new claims 48-51 have been added. Claims 39-44 have been amended with respect to dependency from previous claims. Support can be found at least in original claims 10-12. Support for new claims 48-51 can be found at least at original claims 13 and 16, and in paragraph 0184. Upon entry of this amendment, claims 37-50 will be pending. *No new matter has been added.* Applicant reserves the right to pursue the canceled subject matter in one or more continuation applications. *Applicant confirms that all pending claims fall within the subject matter elected in this application.*

#### ***Rejection of Claims under 35 U.S.C. § 102(a) over Muto et al.***

The Office action noted that the initial rejection under 35 U.S.C. § 102(a) over Muto *et al.* should have included claim 37. As discussed in the personal interview on September 10, 2009, Applicant respectfully submits that the Examiner in the December 18, 2008 Office action was correct in not including claim 37, at least because claim 37 recites " $R^3$ : a substituted or unsubstituted thienyl" and nowhere in Muto *et al.* is such a compound taught or suggested, including in the two compounds cited by the Examiner. Accordingly, Applicant submits the Examiner was correct in her original rejection, and that claim 37 is in condition for allowance.

Additionally, the Office action objects to claims 18-36 as beyond the scope of the base claim. Applicant has canceled these claims mooting these objections. Accordingly, withdrawal of these objections is respectfully requested.

It is Applicant's understanding from the personal interview on September 10, 2009, that Examiner Chang will withdraw the outstanding rejections. Accordingly, Applicant respectfully requests allowance of the instant application.

***Provisional Rejection under the Judicially Created Doctrine of Obviousness-type Double Patenting***

Claims 5, 7, 9-10, 13, 18-20 and 22-47 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over the claims of co-pending Application No. 11/593,758, which is pending and currently stands rejected. Applicant respectfully submits that, while in no way admitting that the present claims are obvious over the claims of co-pending Application No. 11/593,758, should Application No. 11/593,758 be allowed, Applicant will submit a terminal disclaimer in compliance with 37 C.F.R. 1.321(b) and (c), if appropriate, which will obviate the rejection. Applicant further notes that claims 5, 7, 9-10, 13, 18 and 22-36 have been canceled.

**CONCLUSION**

Applicant respectfully submits that the application is in condition for allowance. If a telephone conversation with Applicant's attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call Applicant's attorney.

It is believed that no fees are due for this amendment. However, if it is determined that any additional fees are due; the Commissioner is hereby authorized to charge said fees to the above-referenced Deposit Account.

Respectfully submitted,  
DAVIDSON, DAVIDSON & KAPPEL, LLC

/Richard V. Zanzalari/  
By: \_\_\_\_\_  
Richard V. Zanzalari  
Reg. No. 49,032

Davidson, Davidson & Kappel, LLC  
485 Seventh Avenue, 14<sup>th</sup> Floor  
New York, New York 10018  
(212) 736-1940